



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

June 10, 2008

Mr. Don Walker
D&M Properties
4414 Brainerd Road
Chattanooga, Tennessee 37411

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7007 2560 0003 3385 7572

Subject: DIRECTOR'S ORDER NO. WPC08-0110
GEORGETOWN LANDING/BAY SUBDIVISION
HAMILTON, TENNESSEE

Mr. Walker:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Stephanie Fisher at (615) 532-3634.

Sincerely,

Patrick N. Parker, Manager
Enforcement and Compliance Section

PNP:SJF

cc: DWPC – EFO-Memphis
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
DON WALKER D/B/A)	
D & M PROPERTIES)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
RESPONDENT)	
)	CASE NUMBER WPC08-0110

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

II.

Don Walker is doing business as D & M Properties (hereinafter the "Respondent") and is a resident of the state of Tennessee. The Respondent is the owner/developer of Georgetown Landing/Bay Subdivision, a residential subdivision located on the corner of Ooltewah-Georgetown Road and Biggs Road, Hamilton County, Tennessee. Service of process may be made on the Respondent at 4414 Brainerd Road, Chattanooga, Tennessee 37411.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VI.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

Savannah Creek and its unnamed tributaries, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, Savannah Creek and its unnamed tributaries are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VIII.

On March 25, 2005, a NOI, SWPPP, and appropriate fee were submitted to the Chattanooga Environmental Field Office (CHEFO) by the Respondent, requesting coverage under the TNCGP for construction activities at the site. The division issued coverage under the TNCGP on April 22, 2005, and assigned it tracking number TNR110701.

IX.

On April 19, 2005, an application was submitted to the CHEFO by the Respondent, requesting written ARAP authorization for the installation of an eight-inch sewer line across two unnamed tributaries to Savannah Creek and across wetlands in six locations, the relocation of a 149 LF segment of an unnamed tributary to Savannah Creek, the encapsulation of 95 LF of an unnamed tributary to Savannah Creek, and the deepening of an existing pond. The division issued an individual permit, ARAP NRS05.145, authorizing these activities on November 3, 2007.

X.

On February 23, 2007, division personnel conducted a site inspection and noted that a segment of the unnamed tributary to Savannah Creek, which was to be left undisturbed between the pond and a minor road crossing, had been graded and the channel left in unstable condition. Excavated material had been placed adjacent to the unnamed tributary to Savannah Creek with no Erosion Prevention and Sediment Control (EPSC) measures in place. Additionally, it was noted that the Respondent had constructed an unauthorized in-stream sediment basin. Furthermore, it was observed that EPSC measures at the site had not been properly maintained.

XI.

On February 28, 2007, division personnel issued a Notice of Violation (NOV) to the Respondent for the violations noted during the February 23, 2007, site inspection. The Respondent was instructed to eliminate the in-stream sediment basin and re-establish the stream segment to meet the permitted design, including planting trees. Additionally, the Respondent was instructed to re-establish the stream segment between the pond and the minor road crossing to meet the same permitted design as the downstream section. The Respondent was further

instructed to install and maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.

XII.

On March 5, 2007, MAP Engineers submitted a response to the NOV on the Respondent's behalf requesting an extension from 14 days to 30 days to complete items noted in the NOV.

XIII.

On March 28 2007, the division granted the Respondent a 30 day extension to complete the requirements of the February 28, 2007, NOV, establishing a new completion date of April 5, 2007.

XIV.

On March 20, 2008, division personnel conducted a site inspection and noted that tree plantings along the unnamed tributary to Savannah Creek had not been completed as required by the ARAP, sediment had accumulated into the unnamed tributary resulting in a condition of pollution, and that silt fence and check dams had been placed directly in the channel of the unnamed tributary. Additionally, it was noted that dredged material had been stockpiled in the reservoir. EPSC measures at the site had not been properly installed or maintained allowing sediment to erode off the lots and accumulate in the road.

XV.

On April 1, 2008, division personnel issued a NOV to the Respondent for the violations noted during the March 20, 2008, site inspection. The Respondent was instructed to install and maintain EPSC measures until such time as all land disturbance activities at the site were

complete, stabilize areas where construction has ceased, remove the accumulated sediment from the road, and relocate the stockpiled dredged material out of the reservoir to an upland location no later than April 9, 2008. The Respondent was also instructed to remove the in-stream silt fences and check dams, remove the accumulated sediment from the unnamed tributary to Savannah Creek utilizing hand tools, re-establish a defined channel for the relocated unnamed tributary to Savannah Creek, and vegetate the banks of the unnamed tributary to Savannah Creek no later than April 9, 2008. Additionally, the Respondent was instructed to plant trees along the relocated stream channel as required by the ARAP, submit an updated SWPPP with a site map to include the locations of current and future boat docks and ramps, and submit documentation, including photographs, to the CHEFO no later than April 16, 2008, indicating that all the requirements of the April 1, 2008, NOV were met.

XVI.

On April 8, 2008, Brent Walker of Walker Construction submitted a response on the Respondent's behalf stating that the April 9, 2008, requirements would be completed on April 11, 2008, and requested the April 16, 2008, completion requirement be extended to May 1, 2008.

XVII.

On May 1, 2008, division personnel conducted a compliance inspection and noted that EPSC measures had not been installed in some areas, and that areas where construction activities had ceased had not been stabilized as required by the permit. The relocated unnamed tributary to Savannah Creek had a defined channel, however, the channel had not been constructed with the approved dimensions and the stream banks had not been stabilized with vegetation, allowing sediment to enter the water resulting in a condition of pollution. Furthermore, no trees had been planted as required by the ARAP.

XVIII.

On May 5, 2008, division personnel issued a NOV to the Respondent for the violations noted during the May 1, 2008, compliance inspection. The Respondent was instructed to install and maintain EPSC measures until such time as all land disturbance activities at the site were complete, and continuously remove accumulated sediment from the road until the entire site was stabilized. The Respondent was further instructed to stabilize inactive areas of the sites, and re-establish the relocated unnamed tributary to Savannah Creek to meet the permitted design no later than May 12, 2008, and to plant trees along the relocated unnamed tributary to Savannah Creek as required by the ARAP no later than May 16, 2008. The Respondent was also instructed to submit documentation, including photographs, to the CHEFO by May 20, 2008, showing that all requirements had been met.

XIX.

On May 19, 2008, division personnel conducted a compliance inspection and noted that EPSC measures had not been installed in some areas, and that areas where construction activities had ceased had not been stabilized as required by the permit. Sediment had accumulated in the roads within close proximity to storm drains. The relocated unnamed tributary to Savannah Creek had a defined channel, however, the channel had not been constructed with the approved dimensions and the stream banks had not been stabilized with vegetation, allowing sediment to enter the water resulting in a condition of pollution. Trees had not been planted as required by the ARAP.

XX.

As of this date, the Division has yet to receive documentation including photographic evidence that the requirements stated in the May 5, 2008, NOV were met.

XXI.

During the course of investigation the division incurred DAMAGES in the amount of TWO HUNDRED SEVENTY FOUR DOLLARS AND SIXTY FOUR CENTS (\$274.64).

VIOLATIONS

XXII.

By failing to comply with the terms and conditions of the TNCGP and an existing ARAP, and by altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a

permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XXIII.

By causing a condition of pollution to the unnamed tributary to Savannah Creek, the Respondent has violated T.C.A. Section § 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 7 days of receipt of this ORDER AND ASSESSMENT, establish effective EPSC measures such that sediment does not leave the site. These measures shall be chosen and installed in accordance with the Tennessee Erosion and Sediment Control Handbook.

2. The Respondent shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the CHEFO at Suite 550, 540 McCallie Avenue, Chattanooga, Tennessee 37402, and a copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534.
3. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. Within 30 days of receipt of this ORDER AND ASSESSMENT the Respondent shall submit a corrective action plan (CAP), designed by a professional engineer or other qualified professional, to restore the unnamed tributary to Savannah Creek, specifically addressing the removal of sediment and the stabilization of the affected areas. This plan shall, at a minimum, include detailed options for removing the sediment deposits, measures to stabilize stream banks, and a time schedule to identify the proposed activities and the dates required to complete the work. The CAP is to be submitted to the manager of the Division of Water Pollution Control located at the CHEFO at the address listed in Item 2, above.
5. The Respondent shall, within 6 months of approval from the division, complete the actions outlined in the approved CAP and no additional permitting will be required for these approved activities. The Respondent shall submit notification of completion to the

Water Pollution Control Manager in the CHEFO at the address shown in Item 2 within 7 days of completion.

6. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT pay DAMAGES to the division in the amount of TWO HUNDRED SEVENTY FOUR DOLLARS AND SIXTY FOUR CENTS (\$274.64).
7. The Respondent shall pay a CIVIL PENALTY of FIFTY SEVEN THOUSAND DOLLARS (\$57,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of FOURTEEN THOUSAND DOLLARS (\$14,000.00).
 - b. If the Respondent fails to comply with Part XXIV, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XXIV, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00), payable within 30 days of default.
 - d. If the Respondent fails to comply with Part XXIV, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.

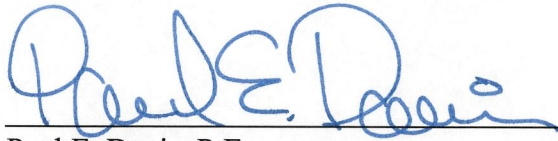
- e. If the Respondent fails to comply with Part XXIV, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00), payable within 30 days of default.
- f. If the Respondent fails to comply with Part XXIV, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of NINE THOUSAND DOLLARS (\$9,000.00), payable within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 16th day of June 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow the Respondent to secure review (appeal) of this ORDER AND ASSESSMENT. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this ORDER AND ASSESSMENT or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the ORDER AND ASSESSMENT. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.